

KARL R. LINDEGREN (SBN 125914)
klindegren@fisherphillips.com
SHAUN J. VOIGT (SBN 265721)
svoigt@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone (949) 851-2424
Facsimile (949) 851-0152

Attorneys for Defendant,
WIZARDS OF THE COAST, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADAM SHAW, PETER
GOLIGHTLY, JUSTIN TURNER,
and JOSHUA STANSFIELD, as
individuals and on behalf of others
similarly situated and the general
public,

Plaintiffs,

v.

WIZARDS OF THE COAST, LLC,
Defendant.

Case No: 5:16-cv-01924-EJD

**DEFENDANT'S EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF ADAM SHAW IN
SUPPORT OF PLAINTIFFS' MOTION
FOR CONDITIONAL
CERTIFICATION**

Date: November 9, 2017
Time: 9:00 a.m.
Ctrm.: 4

*[Filed concurrently with Opposition Brief;
Declarations of Helene Bergeot, Paul
Bazakas, Shaun J. Voigt; Objection to the
Declarations of Ross Cornell, Peter
Golightly, Tyler Morrison, Brad
Rutherford, Joshua Stansfield, and Justin
Turner]*

Complaint Filed: April 12, 2016

Defendant WIZARDS OF THE COAST LLC (hereinafter "Wizards" or
"Defendant"), submits the following objections to evidence filed by Adam Shaw
in support of Plaintiffs ADAM SHAW, PETER GOLIGHTLY, JUSTIN
TURNER, and JOSHUA STANSFIELD's (collectively "Plaintiffs") Motion for
Conditional Certification, as follows:

<u>Ref:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
1. 1 2 3 4 5 6 7 8 9 10 11 12	I have worked as a judge for Wizards of the Coast, LLC (hereinafter “Wizards”). [Para. 4, Page 2, Lines 7-8]	Lacks foundation (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702; <i>Hangarter v. Provident Life & Accident Ins. Co.</i> , 373 F.3d 998, 1016-17 (9th Cir. 2014) (“No witness-expert or non-expert-should opine on the ultimate legal conclusion, which is provide of the court”))
2. 13 14 15 16 17 18 19	... and how Wizards controls or regulates those duties without properly paying judges for their work performed. [Para. 6, Page 2, Lines 14-15]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)
3. 20 21 22 23 24 25 26 27 28	In addition, I know about the experiences of other Magic Judges from regular conversations I have had with hundreds of other Magic judges and from participating in online discussions about Magic gameplay, judging and Wizards’ policies.	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702); Hearsay (<i>Federal Rules of Evidence</i> §802).

<u>Ref:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	[Para. 6, Page 2, Lines 15-17]	
4.	In fact, Wizards sets and enforces strict requirements in order for an individual either to become a judge or move up in judge level. [Para. 8, Page 2, Lines 23-24]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)
5.	Wizards' requires level 1 judges to judge a minimum of 2 events, which requires at least 8 hours. [Para. 8, Page 2, Lines 25-26]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)
6.	It also requires Level 1 Magic judges to take a written test which is approximately 2-3 hours in length and requires 20-30 hours of study time. [Para. 8, Page 2, Lines 26-27]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)
7.	Wizards policies also required me to work enough events as a level 1 judge to obtain the approval and recommendation of	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i>

<u>Ref:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	other higher level judges. [Para. 9, Page 3, Lines 9-10]	§§701, 702)
8.	As a head judge, I received instructions directly from Wizards and implemented Wizards' scheduling and hiring decisions among the judges in my group, among other things. [Para. 12, Pages 3-4, Lines 28-2]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Hearsay (<i>Federal Rules of Evidence</i> §802)
9.	Wizards could not conduct Magic events without judges, including hundreds of judges like me, performing substantial labor, as set forth above. [Para. 13, Page 4, Lines 3-4]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)
10.	These judges constitute the vast majority and bulk of the work force that allows Wizards to conduct its sanctioned events – regardless of the format of the Wizards' sanctioned event i.e. whether it is a one-day or multi-day event. [Para. #, Page 4, Lines 4-6]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)
11.	My work schedule at	Lacks foundation, personal

<u>Ref:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	<p>Wizards' Magic sanctioned events was determined by Wizards, whose hiring and scheduling decisions were implemented by head judges operating in accordance with Wizards' policies and procedures and under Wizards' supervision.</p> <p>[Para. 16, Page 4, Lines 24-26]</p>	<p>knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702); Violates the Best Evidence Rule (<i>Federal Rules of Evidence</i> §1002)</p>
12.	<p>In addition to certification and uniform requirements, Wizards exercised other common forms of control over its Magic judges, even when it is involves personal on-line activity.</p> <p>[Para. 18, Page 5, Lines 10-11]</p>	<p>Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)</p>
13.	<p>Wizards' requires Magic judges to abide by its company standards and policies at all times while representing the Wizards brand.</p> <p>[Para. 18, Page 5, Lines 11-13]</p>	<p>Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)</p>
14.	<p>Wizards has had a policy of compensating Judges for work performed at Magic events with giveaways.</p>	<p>Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i></p>

<u>Ref:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	[Para. 21, Page 5, Lines 23-24]	§§701, 702)
15.	Wizards never paid me regular or overtime wages for my time spent judging at Wizards' Magic sanctioned events as an employee and has never provided me with any kind of wage statement. [Para. 22, Page 6, Lines 5-7]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)
16.	From speaking with other Magic judges, I have learned that Wizards has never provided any Magic judge with wages or wage statements. [Para. 22, Page 6, Lines 8-9]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702); Hearsay (<i>Federal Rules of Evidence</i> §802)
17.	From the time I decided to become involved as a Magic judge, Wizards and its agents told me that Magic judges are "volunteers" and were/are a part of a "non-profit organization." [Para. 23, Page 6, Lines 11-12]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702); Hearsay (<i>Federal Rules of Evidence</i> §802)
18.	Many other Magic judges that	Lacks foundation, personal

<u>Ref:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	I communicated with regularly regarding their status as “volunteers” for Wizards shared the same belief about being “volunteers” for a “non-profit,” which was also based on statements made to them by Wizards. [Para. 23, Page 6, Lines 12-14]	knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702); Hearsay (<i>Federal Rules of Evidence</i> §802)
19.	Wizards told me that learning Wizards rules and policies was important so Wizards would be the best gaming experience in the world, which would ensure consistency and continuity for its players. [Para. 23, Page 6, Lines 16-18]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Hearsay (<i>Federal Rules of Evidence</i> §802)
20.	Its my understanding from speaking with other Magic judges that they were given the same advice by Wizards. [Para. 23, Page 6, Lines 18-20]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Hearsay (<i>Federal Rules of Evidence</i> §802)
21.	Wizards has never reimbursed me for the work-related expenses I necessarily incurred in connection with the performance of	Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702)

<u>Ref:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	my job duties as a Magic judge. [Para. 24, Page 7, Lines 1-2]	
22.	This issue of Wizards' refusal to reimburse Magic judges' expenses is a very common complaint among Magic judges. [Para. 24, Page 7, Lines 2-4]	Lacks foundation, personal knowledge (<i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness (<i>Federal Rules of Evidence</i> §§701, 702); Hearsay (<i>Federal Rules of Evidence</i> §802)

DATE: June 28, 2017

FISHER & PHILLIPS LLP

By: /s/ Shaun J. Voigt
 KARL R. LINDEGREN
 SHAUN J. VOIGT
 Attorneys for Defendant,
 WIZARDS OF THE COAST, LLC

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Fisher & Phillips LLP and my business address is 444 South Flower Street, Suite 1500, Los Angeles, California 90071.

On June 28, 2017, I served the foregoing document **DEFENDANT'S EVIDENTIARY OBJECTIONS TO THE DECLARATION OF ADAM SHAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION** on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

SEE ATTACHED MAILING LIST

☒ **[by ELECTRONIC SUBMISSION]-** I served the above listed document(s) described via the United States District Court's Electronic Filing Program on the designated recipients via electronic transmission through the CM/ECF system on the Court's website. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.

☒ **FEDERAL-** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed June 28, 2017 at Los Angeles, California.

MARVIN JOHNSON

Print Name

By: /s/ Marvin Johnson

Signature

MAILING LIST

<p> Matt Righetti, Esq. John Glugoski, Esq. RIGHETTI GLUGOSKI, PC 456 Montgomery St., Suite 1400 San Francisco, CA 94101 Telephone: (415) 983-0900 Facsimile: (415) 397-9005 Email: matt@righettilaw.com jglugoski@righettilaw.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>
<p> Reuben D. Nathan, Esq. NATHAN & ASSOCIATES, APC 600 W. Broadway Ste.700 San Diego, CA 92101-3370 Telephone: (619) 272-7014 Facsimile: (619) 330-1819 Email: rnathan@nathanlawpractice.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>
<p> Ross Cornell, Esq. ROSS CORNELL, ESQ., APC 111 W. Ocean Blvd., Suite 400 Long Beach, CA 90802 Telephone: (562) 612-1708 Facsimile: (562) 394-9556 Email: ross.law@me.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>
<p> David Borgen, Esq. James Kan, Esq. Katharine Fisher, Esq. Goldstein, Borgen, Dardarian & Ho 300 Lakeside Drive, Suite 1000 Oakland, CA 94612 Telephone: (510) 763-9800 Facsimile: (510) 835-1417 Email: dborgen@gbdhlegal.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>
<p> Michael Malk, Esq. MICHAEL MALK, ESQ. APC 1180 S. Beverly Drive, Suite 302 Los Angeles, California 90035 Telephone: (310) 203-0016 Facsimile: (310) 499-5210 Email: mm@malklawfirm.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>